STATE OF MICHIGAN

COURT OF APPEALS

TAYLOR DOOR PRODUCTS, INC.,

Plaintiff-Appellant,

v

TAYLOR DOOR AND BUILDERS, INC., d/b/a TAYLOR DOOR, and MIKE NEVIN,

Defendants-Appellees.

UNPUBLISHED
December 11, 2003

No. 242754
Wayne Circuit Court
LC No. 01-131013-CZ

Before: Saad, P.J., and Meter and Markey, JJ.

PER CURIAM.

Plaintiff filed this action for injunctive relief and damages and alleged claims of unfair competition, violation of the Michigan Business Corporation Act, MCL 450.1212(1)(b)(i), and violation of the Michigan Consumer Protection Act (MCPA), MCL 445.903(1). Plaintiff appeals the trial court's order of dismissal for plaintiff's failure to post a $30,000 surety bond. Plaintiff also appeals the trial court's order imposing $26,176 in sanctions against plaintiff. We affirm.

I. Contempt

Plaintiff argues that defendant is not the same entity in whose favor the 1995 injunction was entered and, therefore, the trial court erroneously held plaintiff in contempt for violating the injunction. It is unnecessary to decide whether defendant is the same entity or in privity with the company[1] because, as discussed below, regardless of defendant's status, the trial court had the inherent power to enforce its 1995 injunctive order.

Plaintiff further claims that the trial court abused its discretion by finding it in contempt of the 1995 injunction, because there was insufficient evidence to prove contempt, applicable procedures were not followed, and the sanctions imposed were procedurally and substantively defective. We disagree.

[1] A review of the record shows that these two competitors knew each other very well and, despite name modifications, knew the other's business and marketing issues involved in this litigation.

Generally, a trial court's decision to hold a party in contempt is reviewed for an abuse of discretion. *In re Dudzinski*, 257 Mich App 96, 99; 667 NW2d 68 (2003); *Brandt v Brandt*, 250 Mich App 68, 73; 645 NW2d 327 (2002). However, underlying questions of law are reviewed de novo, *Dudzinski*, *supra* at 99, while findings of fact are reviewed for clear error and must be affirmed if there is any evidence to support them, *Brandt*, *supra* at 72-73.

"Contempt of court is a wilful act, omission, or statement that tends to impair the authority or impede the functioning of a court." *In re Contempt of Robertson*, 209 Mich App 433, 436; 531 NW2d 763 (1995). Courts have both inherent and statutory power to hold a party in contempt for disobeying "any lawful order of the court, or any lawful order of a judge of the court." See MCL 6001701(c); see also *Dudzinski*, *supra* at 108. Indeed, [a] party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt . . . ." *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 40; 585 NW2d 290 (1998); see also *Dudzinski*, *supra* at 110-111. A party who believes that an order is somehow unlawful should appeal it or bring an action for relief from judgment. See *id.* at 111-112; see also MCR 2.612(C)(1)(f).

Civil contempt is coercive or remedial, while criminal contempt is punitive. *In re Contempt of Dougherty*, 429 Mich 81, 92-97; 413 NW2d 392 (1987). In a civil contempt proceeding, the sentence is meant to compel the contemnor to do an act which is within his power to do, or to compensate an injured party for damages caused by the contempt. *Dougherty*, *supra* at 93-98; see also MCL 600.1715(2). Where, as here, the alleged "contempt is committed other than in the immediate view and presence of the court,[2] the court may punish it by fine or imprisonment, or both, after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend." MCL 600.1711(2); see also *Robertson*, *supra* at 437-438. The alleged contemnor must be given sufficient time to prepare a defense. *Id.* at 438. Additionally, "proof of contempt must be clear and unequivocal." *Id.* at 439.

Here, plaintiff was ordered to pay $26,176 to compensate defendants for the attorney fees and costs incurred in this action as a result of plaintiff's contempt. See MCL 600.1715(2); see also MCL 600.1721. The record shows that defendants properly supported their motion, the trial court held a hearing, and plaintiff had ample notice and opportunity to prepare a defense. Plaintiff has failed to show that any prejudice resulted from technical errors in labeling the pleadings or the proceedings as provided in MCR 3.606(A). Therefore, reversal on the basis of procedural error is not warranted. See MCR 2.613(A).

Contrary to plaintiff's argument, there was clear and unequivocal proof—including plaintiff's own admissions—that plaintiff's assumed name, the signs on its building, and its newspaper and telephone directory advertisements, all included the words "Taylor Door," in clear violation of the 1995 injunction. Further, plaintiff did not dispute the amount or reasonableness of the attorney fees and costs incurred by defendants in this action. Therefore,

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[2] "[D]irect contempt occurs when all the facts necessary are within the personal knowledge of the judge." *Robertson, supra* at 438.

the trial did not abuse its discretion in holding plaintiff in contempt and ordering it to pay defendants' attorney fees and costs[3].

II. Surety Bond

Plaintiff also claims that the trial court abused its discretion when it ordered plaintiff to post a $30,000 bond as a condition of continuing this action. We disagree. A trial court's decision to require a party to post a surety bond as security for costs is reviewed for an abuse of discretion. *In re Surety Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997).

MCR 2.109(A) provides that, "[o]n motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper, the court may order the opposing party to file with the court clerk a bond with surety as required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court . . . ." "Security should not be required unless there is a substantial reason for doing so." *In re Surety Bond*, *supra* at 331. "A 'substantial reason' for requiring security may exist where there is a 'tenuous theory of liability,' or where there is good reason to believe that a party's allegations are 'groundless and unwarranted.'" *Id.* at 331-332, quoting *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 270; 463 NW2d 254 (1990). "If a party does not file a security bond as ordered, a court properly may dismiss that party's claims." *In re Surety Bond*, *supra* at 332.

If there were no prior actions between these parties, plaintiff's claims might have merit, particularly in light of evidence of consumer and regulatory confusion. However, a permanent injunction was issued against plaintiff in 1995. Plaintiff's complaint did not acknowledge the injunction, let alone plead any theories in avoidance of it. Plaintiff made no attempt to amend its complaint to allege any such theories, nor did it attempt to seek relief from judgment under MCR 2.612. Against this backdrop, the trial court was fully justified in concluding that plaintiff's legal claims appeared tenuous and frivolous.

Though defendants did not file a written motion asking the court to order plaintiff to post security for costs, defense counsel did so orally, in open court. See MCR 2.613(A). Further, because defendants demonstrated that they incurred more than $26,000 in costs and attorney fees during the first year of this lawsuit, plaintiff has failed to show that the amount of the bond was unreasonably high. Therefore, the trial court did not abuse its discretion in ordering plaintiff to post a $30,000 bond.

[3] Moreover, plaintiff's misconduct in misrepresenting to the trial court that there were no prior proceedings regarding this matter serves to support the trial court's contempt ruling and sanctions.

Affirmed.

/s/ Henry William Saad
/s/ Jane E. Markey
/s/ Patrick M. Meter